

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.22431 of 2004

Dated: 16-08-2005

Between:

Suresh Lad S/o.Neminath, R/o.2-5-5, Ramnagar,
Hanmakonda, Warangal District.

...Petitioner

-

and

1. State of Andhra Pradesh rep. by its Secretary, Housing,
Municipal Administration and Urban Development,
at Secretariat, Hyderabad and others.

...Respondents

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.22431 of 2004

ORDER:

This writ petition has been filed by the petitioner viz. Suresh Lad with a prayer to issue a writ in the nature of Mandamus or any other appropriate writ, order or direction declaring the action of the Respondents 2 and 3 in not selling the quarter bearing No.2 (new) (2 RT) situated at Adilabad to the petitioner, in accordance with G.O.Ms.No.56, dated 28.10.1989 issued by the Secretary, Housing, Municipal Administration and Urban Development Department (1st respondent) as illegal and arbitrary.

2. The petitioner worked as a Town Planning Officer in Municipal Council,

Adilabad (2nd respondent). While working at the office of the second respondent, he was allotted a quarter and same was occupied by him on 20.04.1982. Soon after occupying the quarter, he made an application on 23.06.1984 for purchase of the quarter allotted to him under hire purchase scheme in pursuance of the notification dated 13.05.1982 issued by the District Collector, Adilabad. Subsequently, he was transferred from Adilabad and vacated the quarter on 02.01.1985. When his application for allotting the quarter under hire purchase scheme was not considered, he filed Writ Petition No.865 of 1985. The said writ petition came to be disposed of on 10.12.1987. The order passed in the said writ petition reads as follows:

“The Collector in his capacity is not competent authority to consider the application for allotment or for leasing out the premises. But, when the Collector is a member of any committee or a Chairman of that committee and when the Committee is going to allot the quarters or lease out or sell, the petitioner is to file an application before that committee within one month following the procedure. The respondent is directed to dispose of the application filed by him for allotment within two months. The petitioner will continue in the premises for two months, irrespective of the disposal of the petition.

The W.P. is disposed of as above. No costs.”

The Secretary, Housing, Municipal Administration and Urban Development Department issued G.O.Ms.No.56 Housing, dated 20.10.1989 extending the benefit of hire purchase scheme to all those persons, who were in occupation prior to October, 1986 as a special case as per the prescribed guidelines. When the case of the petitioner was not considered for allotment of quarter bearing No.2 (new) (2RT) under the said scheme, he filed W.P.No.2526 of 1991. The said writ petition came to be disposed of on 16.12.2002. The operative portion of the order passed by this Court in the said writ petition reads as follows:

“This Court while admitting the writ petition by order dated 21.02.1991 in W.P.M.P.No.3079 of 1991 granted interim direction to the respondents to forthwith consider the application of the petitioner for allotment of quarter bearing No. 2(new) (2RT) situated at Adilabad on hire purchase basis. In view of the said order, I am of the view that no further adjudication is required in the writ petition. In the circumstances, without expressing any opinion on the merits of the case, the writ petition is disposed of directing the respondents to consider the case of the petitioner for allotment of Quarter No.2 (new)(2 RT) on hire purchase basis in terms of G.O.Ms.No.56, dated

28.10.1989, if it is not already considered in pursuance of the interim direction, within six weeks from the date of receipt of the order. No costs.”

In pursuance of the directions given in the said writ petition, the application of the petitioner was considered and an order came to be passed on 05.03.2004 by the Municipal Council, Adilabad, which is impugned in the writ petition. The request of the petitioner for allotment of quarter on hire purchase basis has been negated under the order impugned in the writ petition.

3. A counter affidavit has been filed by the second respondent. It is stated in the counter affidavit that Notification No.D5/5990/82, dated 13.05.1982, was issued by the District Collector calling for applications from the occupants of LIGH quarters for allotment on hire purchase basis and (27) occupants have also submitted applications in response to the said notification relates to the LIGH Quarters of Government Sector which are under the direct control of the District Collector and it does not include the LIGH Quarters under the Municipal Sector constructed by the Municipality and are under the direct control of the Municipality. It is further stated in the counter affidavit that the petitioner was in occupation of 2 RT quarter (municipal sector) on rental basis. Since the municipality has constructed the said 2 RT quarters for allotment to its employees purely on rental basis, who come on transfer to Adilabad Municipality and the said procedure is being continued till date. The notification issued by the District Collector on 13.05.1982 calling for applications from the occupants for allotment on hire purchase basis by virtue of which he has paid Rs.125/- towards E.M.D. pertains to allotment of LIGH Quarters of Government Sector, which are under the control of the District Collector, Adilabad. The Municipality is not at all concerned with the allotment of those quarters. In nutshell the plea of the second respondent-Municipal Council is that there is no allotment of 2 RT quarters of Municipal Sector on hire purchase basis.

4. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the second respondent-Municipal Council.

5. Learned Counsel appearing for the petitioner submits that the petitioner being in

occupation of the 2 RT Quarter of Municipal Sector for more than two years is entitled for allotment of the same under hire purchase scheme. He refers G.O.Ms.No.56, dated 20.10.1989.

6. Learned Standing Counsel appearing for the second respondent-Municipal Council submits that the petitioner was transferred from Adilabad Municipal Council in the year 1985 and he vacated the quarter on 02.01.1985. But, subsequently he filed a suit in O.S.No.2 of 1985 on the file of the District Munsif, Adilabad and obtained *status quo* orders and that the said suit ended in dismissal on 25.04.1988.

7. The petitioner claims benefit under notification dated 13.05.1982 and G.O.Ms.No.56 Housing, dated 20.10.1989. Basing on the notification and the G.O., the petitioner asserts that he is entitled for allotment of the 2 RT quarter (Municipal Sector) on hire purchase basis. The notification dated 13.05.1982 was issued by the office of the District Collector, Adilabad, which relates to L.I.G.H. quarters at Adilabad and the persons who are in occupation for not less than two years prior to the date of notification are entitled to make an application for allotment of house on hire purchase basis. Admittedly the petitioner came to Adilabad and joined as Town Planning Officer in the office of the second respondent-Municipal Council on 20.04.1982. By the date of the notification, he did not put in requisite number of years of occupation and therefore, he is not entitled to claim any benefit under the notification dated 13.05.1982. With regard to G.O.Ms.No.56 Housing dated 20.10.1989, by the time the G.O. came into operation, the petitioner has already vacated the premises and shifted to Ramagundam notified area committee. To claim the benefit under the said G.O., one must necessarily deposit 1/5th of the cost of the house with the municipality and must have incurred sufficient amount towards repairs. Since the petitioner has not satisfied any of the conditions stipulated in para.6 of the G.O. he cannot claim any benefit of it. For better appreciation, I may refer para.6 of the G.O. and it is thus:

“Government have reviewed the matter once again and are of the view that since the existing persons have been in occupation of the houses constructed under LIGH scheme for more than 25 years; having deposited 1/5th of the cost of the houses with the Municipalities and having repaired the houses by investing huge amounts and paying house taxes; the instructions

issued in the Government Memo 4th read above not to sell these houses are bound to result in hardship to the occupants of the houses. This is particularly true in the context when the Govt. have approved as long back as in the year 1967 the sale of houses to the persons who were already in occupation and who were eligible for such allotment on hire purchase basis and when again Government issued orders in the Memo 3rd read above permitting the Municipalities to consider the cases of existing occupants who were in occupation for more than 2 years.”

8. The second respondent-Municipal Council has taken a specific stand that 2 RT quarters, which are under its control, have not been allotted to any one on hire purchase basis. The same fact has been reflected in the impugned order. I do not see any flaw in the impugned order warranting interference of this Court in exercise of the powers under Article 226 of the Constitution of India.

9. Accordingly, this writ petition is dismissed. No costs.

B.SESHASAYANA REDDY, J.

Dated: 16th August, 2005.